IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.965 of 1997

Balamani .. Appellant/Plaintiff

Vs.

Natarajan .. Respondent/Defendant

Prayer: This appeal has been preferred against the decree and Judgment dated 4.4.1996, in A.S.No.83 of 1994 passed by the Subordinate Judge, Gobichettipalayam, reversing the decree and judgment dated 1.7.1994 in O.S.No.344/1993 on the file of the District Munsif, Sathiyamangalam.

For Appellant : Mr.M.M.Sundaresh

For Respondent : No Appearance

JUDGMENT

This appeal has been preferred against the decree and judgment in A.S.No.83 of 1994 on the file of the Court of Subordinate Judge, Gobichittipalayam. The plaintiff has filed the suit for recovery of money of Rs.12,264/- from the defendant. The plaintiff has succeeded before the trial Court. On appeal by the defendant the learned first appellate judge has reversed the findings of the learned trial judge, which necessitated the plaintiff to come forward with this second appeal.

2. The short facts in the plaint relevant for deciding this appeal are as follows:-

On 14.7.1993 the defendant has borrowed Rs.12,000/- from the plaintiff to meet his family expenses and had executed a promissory note agreeing to pay 9% interest. Inspited of the notice dated 02.10.2003 and several demands made in person, the defendant failed to pay the debt amount. Hence, the plaintiff has filed the suit.

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3.The defendant in his written statement would contend that the suit promissory note was not executed by him and that he has not borrwed Rs.12,000/- on 14.7.1993 from the plaintiff as alleged in the plaint. The plaintiff's husband viz. Subramaniam has filed O.S.No.205/93 on the basis of a promissory note for the recovery of Rs.7,400/-. There was a compromise entered into between the parties in the said suit and as per the terms of the compromise, the defendant has to pay Rs.3,000/- to the husband of the plaintiff viz. Subramaniam within two months. The defendant was making arrangements to sell his vacant site in order to discharge the said debt. But as compromised the defendant could not repay the said amount to the husband of the plaintiff Viz. Subramaniam. Hence, the plaintiff has forged the suit promissory note at the instance of her husband. Hence, the suit is liable to be dismissed with costs.

4. P.W.1 was examined and Ex.A.1 to A.3 were marked on the side of the plaintiff. The defendant has examined himself as D.W.1 and exhibited Ex.D.1 and Ex.D.2. After going through the oral and documentary evidence let in by both parties, the learned trial judge had held that the plaintiff has proved his case and subsequently decreed the suit as prayed for with costs. On appeal, the decree and judgment of the trial Court was set side in A.S.No.83/1994 on the file of the Subordinate Judge, Gobichettipalayam. Hence, the plaintiff has knocked at the doors of this Court with this second appeal.

5. The substantial questions of law involved in this appeal are as follows:-

> "a) Has not the appellate Court committed an error in law in invoking the statutory presumption under Section 11 of the Evidence Act for the proof of execution?
>
> b) Has not the appellate Court right in resorting to the machinery under Section 73 of Evidence Act to prove forgery under signature. If so is it opinion solely final and conclusive on that aspect without any proof or evidence?"

6.The points:-

6(a) This is a simple suit on promissory note-Ex.A.1. The defence in the suit is that Ex.A.1 is a forged one. Even though the defendant would contend in his written statement that the plaintiff has forged Ex.A.1, the defendant has not let in any evidence to show that Ex.A.1 is a forged one. In the cross-examination the defendant goes to the extent of denying his own signature in vakalat and deposition. The learned trial judge after comparing the disputed signature in Ex.A.1 with that of the admitted signatures in the

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documents produced before the trial Court, has come to the conclusion that the singnature contained in Ex.A.1 is that of the defendant. The learned first appellate judge has compared the disputed signature in Ex.A.1 with that of the admitted signature of the defendant in vakalat and deposition of the defendant (D.W.1), has observed some difference seen in the characters of the singature found in Ex.A.1 and the admitted signatures in the vakalat given by the defendant and the written statement filed by the defendant and the deposition of the defendant. The evidence of D.W.1 cannot be believed at all because he has denied his own signature found in the written statement as well as in the vakalat. Under Section 73 of the Evidence Act, the trial Court has compared the admitted signature of the defendant in the vakalat and written statement and deposition with that of the disputed signature in Ex.A.1 and has come to the correct conclusion that the signature in Ex.A.1 is that of the defendant. In the absence of any expert's opinion regarding the disputed signature in Ex.A.1 with that of the admitted signature in the vakalat, written statement and in the deposition of the defendant or with any other document containing the signature of the defendant, we have to take the findings of the learned trial judge as a proof for comparison of the disputed signature of the defendant in Ex.A.1 and admitted signature in the documents available before the trial Court. I also compared the disputed signature in Ex.A.1 with that of the signature found in the deposition of the defendant (D.W.1) and the signature found in the vakalat as well as in the written statement filed by the defendant but I could not find any discrepancy between the disputed signature and the admitted signatures in the above said documents.

6(b) The learned counsel for the appellant relied on 1999 (6) SCC 104 (K.S.Sathyanarayan Vs. V.R.Narayana Rao), and contended that the trial Court is competent to compare the disputed signature with that of the admitted signature in the vakalat and written statement as per the section 72 of the Evidence Act. The facts in the above said ratio squarely applies to the fact of the case on hand. Even in that case, the defendant had denied his signature in the sale agreement and the defendant in that case also denied his signature in his written statement and also his signature in the vakalat. The the above said dictum it has been held by the Honourable Apex Court as follows:-

> "A piquant situation had developed before the trial Court when the 1st defendant denied his signatures on the written statement and the vakalathnama in favour of his counsel. The trial Could should have immediately probed into the matter. It should have recorded the statement of the counsel for the 1st defendant to find out if the vakalatnama in his favour and the written statement were not signed by the 1st defendant whom he represented. It was apparent that the 1st defendant was trying to get out of the situation when confronted with his signatures on

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the vakalatnama and the written statement and his having earlier denied his signatures on Exh.P.1 and Exh.P.2 in order to defeat the claim of the plaintiff. Falsehood of the claim of the 1st defendant was writ large on the face of it. The trial Court could have also compared the signatures of the 1st defendant as provided in Section 73 of the Indian Evidence Act."

In the case on hand also the defendant has gone to the extent of denying his own signature in the vakalat and in the written statement. Under such circumstances, no credibility can be attached to the evidence of D.W.1, who would defend the case by a plea of forgery but has failed to take any steps to prove the same. Under such circumstances, I am of the view that the findings of the learned first appellate judge warrants interference from this Court. Points are answered accordingly.

7. In the result, the second appeal is allowed setting aside the decree and judgment in A.S.No.83/1994 on the file of the Court of Subordinate Judge, Gobichettipalayam, thereby the decree and judgment of the trial Court in O.S.No.344/1993 on the file of the Court of District Munsif, Sathiyamangalam, is restored to the file and the suit is decreed as prayed for with costs throughout.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Subordinate Judge, Gobichettypalayam.

2.The District Munsif, Sathiyamangalam.

3. The Section Officer,
VR Section, High Court,
Madras.

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+ 1 cc to Mr. M. M. Sundaresh, Advocate SR No. 17331

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SR/30.3.2007

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